IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 500 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTABEN @ USHABEN ANIRUDDH NEGANDHI

Versus

MOTIBEN VITHALDAS ASHAR

Appearance:

1. First Appeal No. 500 of 2001

MS MITA S PANCHAL, learned advocate for appellant by way of legal aid.

MR MANOJ N POPAT for Respondents No. 1-2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/01/2002

ORAL JUDGEMENT

In this Appeal under Section 96 of the Code of Civil Procedure, 1908 ('The Code' for short), appellant

who is the original plaintiff has questioned the legality and validity of the judgement and decree dated September 30, 1999 recorded in Special Civil Suit No. 65 of 1995 by the learned Second Joint Civil Judge (SD) Jamnagar, whereby suit filed by the appellant for declaration to the effect that sale deed dated June 16, 1995 executed by respondent No.1 in favour of respondent No.2 was void as respondent No.1 had not obtained advise as per the recital in the will made by deceased husband of respondent No.1, came to be dismissed with cost.

2. The appellant's brother Vitthaldas Kalyanji who died on July 2, 1993 had made a registered will dated October 15, 1984 and supplementary will dated July 31, 1985 with regard to the properties situated in village Kalavad. As per the recital contained in the said wills for selling the properties, his wife, respondent No.1 had to take advise of the appellant. It is the case of the appellant that though there was a recital in both the wills to take advise of the appellant, respondent No.1 had not taken any advise for selling the said property which was mutated in her name by virtue of the said will. Respondent No.1 had sold his property in consideration of Rs.35,000/- to respondent No.2 by the registered sale deed dated June 16, 1995. The appellant, therefore, filed suit for declaration that the said sale transaction executed by respondent No.1 in favour of respondent No.2 is void as respondent No.1 had not obtained any advise as per the will from the appellant.

3. The suit was contested by respondent Nos.1 and 2 by filing separate written statements at exhibit-16 and exhibit-35 respectively, wherein, inter alia, all the allegations made in the plaint were denied. It was also denied by respondent No.1 that the said house was sold to respondent No.2 without consultation with the appellant. It was also contended that respondent No.1 was the sole heir and legal representative of deceased Vitthaldas Kalyanji and as per wills she became the sole owner and in possession of the property. Respondent No.2 in her reply contended that she had paid Rs.70,000/- by way of consideration for purchasing the said house. The said house was sold to her after consulting the appellant and, at the time of consultation, the appellant had not objected to this transaction. Therefore, suit filed by the appellant is misconceived and ultimately both the respondents prayed for dismissal of the suit.

4. The Trial Court formulated the issues at exhibit-41 in light of the pleadings of the parties. Viva-voce and the documentary evidence were considered.

On appreciation and evaluation of the evidence, the Trial Court came to the conclusion that respondent No.1 had right to sell the property of deceased Vitthaldas Kalyanji to respondent No.2 without taking advise of the appellant and, therefore, said transaction was not null and void, was not required to be set aside. It is further held that defendant had taken advise of the appellant prior to disposing of the property. On the basis of the said reasoning and conclusion the trial Court dismissed the suit, which has given rise to the present appeal at the instance of the appellant/ plaintiff.

5. Ms Mita S Panchal, learned advocate who appeared on behalf of the appellant by way of legal aid contended that learned Trial Judge has not considered the condition mentioned in the will made by the brother of the appellant, wherein, it is specifically mentioned that after death of Vitthaldas Kalyanji, wife of Vitthaldas Kalyanji would take advise before dealing with the property of the appellant's brother. It is also emphatically contended that the mental condition of respondent No.2 was absolutely bad, therefore, the evidence of respondent No.2 had no evindentary value. She, therefore, urged that the judgement and decree passed by the learned Trial judge is required to be quashed and set aside by allowing the suit as prayed for in the plaint.

6. Mr. Manoj Popet, learned advocate for the respondents contended that there is absolutely no evidence in favour of the appellant which requires to be considered by this appellate Court by exercising powers under Section 96 of the Code. It is true that there is recital in the wills that before disposing of the property of late Vitthaldas Kalyanji, his wife, respondent No.1, had to consult sister of late Vitthaldas Kalyanji who is the appellant. The evidence on record clinchingly shows that respondent No.1 had consulted the appellant before executing the sale deed in favour of respondent No.2. Therefore, the said sale transaction is valid, in accordance with law and as per the recital made in the wills. He, therefore, supported the judgement throughout and ultimately urged to dismiss the appeal.

7. I have heard the learned advocates appearing for the parties. I have perused the impugned judgement and decree and the set of evidence, copies whereof came to be supplied to me during the course of hearing by Ms Mita S Panchal, learned advocate for the appellant.

8. At the outset, it may be stated that there is no dispute regarding relationship between the parties. There is also no dispute that late Vitthaldas Kalyanji had made two wills; one dated October 15, 1984 and second dated July 31, 1985. By the said wills he had bequeathed all the property stood in his name to his wife, respondent No.1. However, in the said will, he incorporated a condition that since his wife is so innocent, before disposing of the property she should consult his sister, that is, appellant so that she may not be cheated by anyone. There is also no dispute that the said house was sold to respondent No.2 vide registered sale deed dated June 16, 1995 in consideration of Rs.70,000/=.

9. Now the only question which requires to be decided in this appeal is as to whether prior to selling the said house, respondent No.1 had consulted appellant or not. In this connection, it would be appropriate to refer to the oral evidence of the appellant which was recorded at exhibit-43, wherein, inter alia, she has stated that respondent No.1 had not consulted prior to disposal of the property and she had also not obtained any probate or will. However, in cross-examination she has admitted that before selling the house, respondent No.2 had come to her house. She has also admitted that respondent No.1 had also visited her house when she was ill. Therefore, from the evidence of the appellant herself it has become clear that prior to selling of the said house by respondent No.1 in favour of respondent No.2, appellant was consulted. Respondent No.1 was also examined through Court Commissioner at exhibit-63, wherein, inter alia she has stated that one Kirti Kumar was a tenant in the house who was not vacating the said house, therefore, she had no other alternative but to sell the said house to Kirti Kumar and, therefore, before selling the house she had informed Kantaben and also approached her at Jamnagar when the appellant told her that she could do whatever she liked.

10. In view of the aforesaid clinching evidence, I am of the opinion that the condition mentioned in the wills made by deceased Vitthaldas Kalyanji with regard to obtaining the advise of the appellant for selling the property mentioned in the wills has been fulfilled and, therefore, the Trial Court has very rightly considered the evidence and reached to ultimate conclusion that the appellant failed to prove the suit claim and, therefore, rightly dismissed the suit.

11. It is a settled legal position that even at the

final hearing stage when the appellate court agrees with the reasons given and conclusions arrived at by the Trial Court, it is not necessary for the appellate court to reiterate the evidence and elaborately state reasons for reaching the same conclusion. Expression of general agreement with the reasons given and conclusions arrived at by the Trial Court would be sufficient. This is so held by the Supreme Court in the case of GIRIJANANDINI DEVI AND OTHERS V. BIJENDRA NARAIN CHOUDHARY, AIR 1967 SC 1124. In the instant case, as indicated hereinabove, I agree with the reasons given and conclusions arrived at by the Trial Court as no other conclusion was possible on the facts and in the circumstances emerging from the record of the case.

12. Seen in the above context, this appeal is found meritless and accordingly it deserves to be dismissed.

13. For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

(A.M.Kapadia, J)

Jayanti*